

**BELLSOUTH**

EX PARTE OR LATE FILED

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October 21, 2003

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, DC 20554

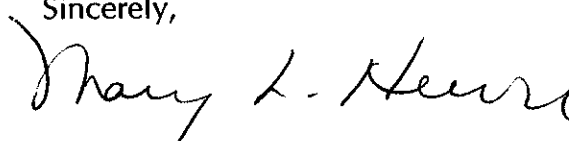
***Re: WC Dkt. 02-112, Sunset of the BOC Separate Affiliate and Related Requirements; CC Dkt. 00-175, 2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903.***

Dear Ms. Dortch,

In connection with an October 20 meeting regarding the above proceeding (see October 21, 2003 meeting notice) BellSouth provided the attached materials to Renee Crittendon of the Wireline Competition Bureau.

This notice is being filed pursuant to Sec. 1.1206(b)(2) of the Commission's rules. If you have any questions regarding this filing please do not hesitate to contact me.

Sincerely,

  
Mary L. Henze

Attachments

cc: R. Crittendon

1 BELLSOUTH TELECOMMUNICATIONS, INC.

2 TESTIMONY OF JOHN A. RUSCILLI

3 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

4 DOCKET NOS. 2002-367-C & 2002-408-C

5 JULY 23, 2003

6  
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS  
9 ADDRESS.

10  
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director –  
12 Policy Implementation and Regulatory Compliance for the nine-state BellSouth  
13 region. My business address is 675 West Peachtree Street, Atlanta, Georgia  
14 30375.

15  
16 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
17 AND EXPERIENCE.

18  
19 A. I attended the University of Alabama in Birmingham where I earned a Bachelor  
20 of Science Degree in 1979 and a Master of Business Administration in 1982.  
21 After graduation I began employment with South Central Bell as an Account  
22 Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late  
23 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing  
24 and Economics organization with various responsibilities for business case  
25 analysis, tariffing, demand analysis and price regulation. In July 1997, I became

1 Director of Regulatory and Legislative Affairs for BellSouth Long Distance, Inc.,  
2 with responsibilities that included obtaining the necessary certificates of public  
3 convenience and necessity, testifying, Federal Communications Commission  
4 ("FCC") and state regulatory support, federal and state compliance reporting and  
5 tariffing for all 50 states and the FCC. I assumed my current position in July  
6 2000.

7  
8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9  
10 A. The purpose of my testimony is to:

- 11 I. Explain how this proceeding was commenced;
- 12
- 13 II. Summarize prior Commission Orders addressing section 58-9-576 of
- 14 the South Carolina Code;
- 15
- 16 III. Address BellSouth's proposed definition of "abuse of market position"
- 17 from a policy perspective;
- 18
- 19 IV. Address certain portions of the July 9, 2003 testimony of Staff Witness
- 20 Dr. James Spearman from a policy perspective;
- 21
- 22 V. Explain the policy reasons that support the ability of all carriers –
- 23 including incumbent local exchange carriers – to offer "bundles" of
- 24 products and services at a single price; and
- 25
- 26 VI. Set forth the criteria that BellSouth proposes for determining whether
- 27 certain actions are an abuse of market position.
- 28

29 In the course of my testimony, I also will describe some of the many offerings  
30 that competitive local exchange carriers ("CLECs") are advertising to residential  
31 and business customers in the State of South Carolina.

1                    I.     HOW THIS PROCEEDING WAS COMMENCED

2  
3     Q.     PLEASE BRIEFLY DESCRIBE HOW THIS PROCEEDING WAS  
4             COMMENCED.

5  
6     A.     On June 6, 2002, BellSouth filed tariff revisions increasing the prices of certain  
7             optional business and residential services pursuant to Section 58-9-576 of the  
8             South Carolina Code. Subsequently, the Consumer Advocate for the State of  
9             South Carolina filed a complaint alleging that BellSouth's price increases are an  
10            abuse of market position. BellSouth filed a Motion to Dismiss the Consumer  
11            Advocate's Complaint on August 23, 2002, and the Consumer Advocate filed a  
12            Response on September 13, 2002.

13  
14            On September 19, 2002, the Commission entered an "Order Holding Complaint in  
15            Abeyance and Establishing Generic Proceeding," in which the Commission ruled  
16            that

17                    before we can continue to process complaints such as the  
18                    Consumer Advocate's, we are going to have to establish a  
19                    definition for "abuse of market position" and criteria for  
20                    determining whether various behaviors by a Company constitute  
21                    "abuse of market position."

22  
23                    Accordingly, we hereby establish a generic proceeding under  
24                    Docket No. 1999-469-C, BellSouth's Alternative Regulation  
25                    Docket, in order to make this determination.

26  
27            See Order No. 2002-679 in Docket No. 2002-234-C at 4. The Commission also  
28            "decline[d] to stay institution of the prices in BellSouth's filing in this matter." *Id.*  
29            at 5.

1

2 In a separate docket, the Commission entered an Order finding that "a generic  
3 definition of 'inflation-based index' for purposes of local rate increases under S.C.  
4 Code Ann. Section 58-9-576 (Supp. 2002) needs to be established to avoid  
5 piecemeal development of the definition of the concept." *See* Order No. 2003-82  
6 in Docket No. 2002-408-C at 2.

7

8 Finally, the Commission entered an Order consolidating the abuse of market  
9 position issue with the inflation-based index issue and holding that "both issues  
10 shall be addressed in one hearing." *See* Order No. 2003-124 in Docket No. 2002-  
11 367-C.

12

13 Q. WHY IS THE DEFINITION OF THE TERM "ABUSE OF MARKET  
14 POSITION" AT ISSUE IN THIS PROCEEDING?

15

16 A. The definition of the term "abuse of market position" is at issue because this term  
17 appears in Section 58-9-576 of the South Carolina Code, which is the section that  
18 allows certain telephone companies like BellSouth to elect to have the rates, terms  
19 and conditions of their regulated services determined pursuant to the alternative  
20 regulation plan described in that statute. Subsections (B)(3) and (B)(4) of that  
21 statute provides that rates for "flat-rated local exchange services for residential  
22 and single-line business customers" are capped for a designated period, after

1 which they may be adjusted on an annual basis pursuant to an inflation-based  
2 index. Subsection (B)(5) of the statute provides that

3 The LEC's (sic) shall set rates for all other services on a basis that  
4 does not unreasonably discriminate between similarly situated  
5 customers; provided, however, that all such rates are subject to a  
6 complaint process for abuse of market position in accordance with  
7 guidelines to be adopted by the commission.  
8

9 The statute does not define the term "abuse of market position."  
10

11  
12 **II. PRIOR COMMISSION ORDERS**  
13 **ADDRESSING SECTION 58-9-576**  
14

15  
16 Q. HAS THIS COMMISSION ALREADY ENTERED ORDERS ADDRESSING  
17 SECTION 58-9-576?  
18

19 A. Yes, it has. In September 2000, the Commission entered an Order addressing  
20 BellSouth's proposal for the establishment of guidelines pursuant to Section 58-9-  
21 576(B)(5).<sup>1</sup> The Commission made at least three decisions in that Order that  
22 address Section 58-9-576: one of those decisions relates to the cap period set  
23 forth in section 58-9-576(B)(3); and two of those decisions relate to prices  
24 allowed under section 58-9-576(B)(5).  
25

26 Q. WHAT DECISION DID THE COMMISSION MAKE REGARDING THE CAP  
27 PERIOD SET FORTH IN SECTION 58-9-576(B)(3)?  
28

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<sup>1</sup> See Order Ruling on Guidelines, *In Re: Proceeding to Review BellSouth Telecommunications, Inc.'s Guidelines for Alternate Form of Regulation*, Order No. 2000-676 in Docket No. 1999-469-C (September 26, 2000) ("Guidelines Order").

1 A. In its Guidelines Order, the Commission recognized that it previously had entered  
2 an Order (No. 1999-411) adopting an Agreement between BellSouth and the  
3 Consumer Advocate that addressed rates BellSouth may charge for certain  
4 services. *See* Guidelines Order at p. 9, ¶3. The Commission decided that for the  
5 term of the Agreement, this prior Order "includes additional services to be capped  
6 and extends the length of the cap period." *Id.* The Commission also decided that  
7 "once the terms of the agreement are fulfilled, the terms of the statute govern the  
8 pricing of BellSouth's services." *Id.*

9  
10 Q. WHAT IS THE FIRST OF THE TWO DECISIONS THE COMMISSION  
11 MADE IN THE GUIDELINES ORDER REGARDING THE PRICING  
12 ALLOWED UNDER SECTION 58-9-576(B)(5)?

13  
14  
15 A. The Commission decided that prices for "Other Services" that are subject to  
16 Section 58-9-576(B)(5) "should be set at rates that equal or exceed BellSouth's  
17 long run incremental cost of providing such services." *See* Guidelines Order at p.  
18 10, ¶6. The Commission explained that "[a]ny prices which deviate from long  
19 run incremental costs could indicate an abuse of market power." *Id.* (emphasis  
20 added). As both Staff witness Dr. Spearman and BellSouth Witness Dr. William  
21 Taylor agree, the use of the term "market power" should be read interchangeably  
22 with the term "market position" in this context.

1 Q. DOES THIS MEAN THAT ANY PRICE THAT IS BELOW LONG RUN  
2 INCREMENTAL COST IS, IN FACT, AN ABUSE OF MARKET POSITION?

3

4 A. No. As the Commission stated in its Generic Order, prices that are below long  
5 run incremental costs "could" indicate an abuse of market position, but they do  
6 not necessarily indicate an abuse of market position. It all depends on the  
7 circumstances. To give but one example, if another carrier's prices are below that  
8 level, for instance, it would not be an abuse of market position for BellSouth to  
9 meet that carrier's prices. In fact, Section 58-9-280(I) of the South Carolina Code  
10 states that "[t]he incumbent LEC's (sic) subject to this section shall be authorized  
11 to meet the offerings of any local exchange carrier serving the same area by  
12 packaging services together, using volume discounts and term discounts, and by  
13 offering individual contracts for services, except as restricted by federal law."  
14 (Emphasis added).

15

16 Q. WHAT IS THE SECOND OF THE TWO DECISIONS THE COMMISSION  
17 MADE IN THE GUIDELINES ORDER REGARDING THE PRICING  
18 ALLOWED UNDER SECTION 58-9-576(B)(5)?

19

20 A. Section 576(B)(5) does not impose any "cap" on the prices of any "Other  
21 Services." BellSouth, however, volunteered to operate under a self-imposed cap  
22 with regard to "Other Services," and the Commission ruled that "BellSouth's  
23 voluntary cap on services other than Basic Services is adopted." See Guidelines  
24 Order at p. 10, ¶7. Specifically, price increases for Other Services "shall not



1 exceed five percent of aggregate revenues for Other Services during any given  
2 twelve-month period." *Id.*, ¶6. "Aggregate revenues" are "total annual revenues  
3 for services covered under section 58-9-576 with the exception of flat-rated  
4 residential and single-line business services." *Id.*

5  
6 Q. HAS THE COMMISSION ENTERED ANY OTHER ORDER THAT  
7 ADDRESSES SECTION 58-9-576?

8  
9 A. Yes, in Docket No. 2000-378-C, several CLECs argued that certain BellSouth  
10 promotional offerings unreasonably discriminated against similarly situated  
11 customers and that the promotions were an abuse of market position. After an  
12 evidentiary hearing, the Commission found that the Complaint "must be denied  
13 and dismissed" because BellSouth's offerings were "neither anticompetitive, nor  
14 discriminatory, nor is there an abuse of market position by BellSouth . . . ." *See*  
15 *Order Ruling on Complaint, In Re: Southeastern Competitive Carriers Ass'n,*  
16 *NewSouth Communications Corp., and TriVergent Communications v. BellSouth*  
17 *Telecom. Inc.*, Order No. 2001-1036 in Docket No. 2000-378-C at p. 14, ¶10  
18 (October 29, 2001).

19  
20 **III. BELL SOUTH'S PROPOSED DEFINITION OF**  
21 **"ABUSE OF MARKET POSITION"**  
22

23  
24  
25 Q. HOW DOES BELL SOUTH PROPOSE THAT THE COMMISSION DEFINE  
26 THE TERM "ABUSE OF MARKET POSITION" IN THIS DOCKET?

1 A. For all of the reasons set forth in the testimony of BellSouth witness Dr. Taylor,  
2 BellSouth believes that basically, the Commission should define "abuse of market  
3 position," as that term is used in Section 58-9-576(B)(5), as "any anticompetitive  
4 pricing conduct that harms the competitive process." This definition would need  
5 to be applied to a well-defined product and geographic market.

6  
7 Q. HOW DOES THIS DEFINITION DIFFER FROM THE DEFINITION  
8 OFFERED BY STAFF WITNESS DR. JAMES SPEARMAN?

9  
10 A. I will have to defer more specific questions regarding the differences between  
11 BellSouth's proposed definition and Dr. Spearman's proposed definition to  
12 BellSouth witness Dr. Taylor. I can say, however, that one important difference  
13 is that Dr. Spearman uses the phrase "any action," while BellSouth proposed the  
14 phrase "any anticompetitive pricing conduct."

15  
16 Q. WHY SHOULD THE WORD "ANTICOMPETTIVE" BE ADDED TO THE  
17 DEFINITION DR. SPEARMAN PROPOSED?

18  
19 A. Because not all action that effectively prohibits a new firm from entering the  
20 market should be prohibited. Assume, for example, that a firm that wants to enter  
21 the market is relatively inefficient and that, as a result of that inefficiency, it  
22 simply cannot compete with the prices being offered by the other competitors in  
23 the market. The competitive, appropriate, and lower prices offered by the other

1 competitors may effectively prohibit the new firm from entering the market, but  
2 there is nothing anticompetitive or improper about that. To the contrary, that is  
3 exactly how competition is supposed to work.  
4

5 Q. WHY SHOULD THE WORD "PRICING" BE ADDED TO THE DEFINITION  
6 DR. SPEARMAN PROPOSED?  
7

8 A. Because the purpose of this docket is not to define the term "abuse of market  
9 position" in the abstract as a general economic principle. Instead, the purpose of  
10 this docket is to define the term "abuse of market position" in the specific context  
11 in which the General Assembly used that term in Section 58-9-576(B)(5). This  
12 section reads:

13 The LEC's (sic) shall set rates for all other services [that is, for  
14 services other than flat-rated local exchange services for residential  
15 and single-line business customers] on a basis that does not  
16 unreasonably discriminate between similarly situated customers;  
17 provided, however, that all such rates are subject to a complaint  
18 process for abuse of market position in accordance with guidelines  
19 to be adopted by the commission. (Emphasis added)  
20

21 While I am not an attorney, I do have years of regulatory policy experience, and  
22 based on that experience, it appears to me that by stating that "rates" are subject to  
23 a complaint process for "abuse of market position," the statute makes it clear that  
24 the Commission may only consider whether pricing behavior constitutes an abuse  
25 of market position. The Commission, therefore, should not consider any of the  
26 non-pricing behavior that Dr. Spearman discusses at pages 5-8 of his July 9, 2003  
27 testimony in adopting a definition of abuse of market position. Instead, the

1 Commission should consider only pricing behavior (and more specifically, for the  
2 reasons explained by BellSouth witness Dr. Taylor, only anticompetitive pricing  
3 behavior) in adopting a definition of "abuse of market position" in this docket.  
4

5 Q. ARE SAFEGUARDS ALREADY IN PLACE TODAY TO PROTECT  
6 AGAINST ANTICOMPETITIVE PRICING CONDUCT BY BELL SOUTH?  
7

8 A. Yes. As I explained above, BellSouth's rates for "Other Services" already are  
9 subject to both a price floor and a price ceiling that protect against anticompetitive  
10 pricing conduct.  
11

12 The price floor is the requirement that prices for the "Other Services" that are  
13 subject to Section 58-9-576(B)(5) "should be set at rates that equal or exceed  
14 BellSouth's long run incremental cost of providing such services." See  
15 Guidelines Order at p. 10, ¶6. This floor applies unless BellSouth meets the  
16 offerings of a competitor pursuant to 58-9-280(I) of the South Carolina Code of  
17 Laws.  
18

19 Additionally, and while not necessary to protect against anticompetitive behavior,  
20 BellSouth's rates for "Other Services" also are subject to the voluntary cap on  
21 "Other Services" that the Commission adopted in its Guidelines Order – price  
22 increases for those services will not exceed "five percent of aggregate revenues  
23 for Other Services during any given twelve-month period." *Id.*, ¶6.

1 Q. IS BELLSOUTH'S VOLUNTARY PRICE CAP ON RATES FOR "OTHER  
2 SERVICES" THE ONLY THING THAT AFFECTS BELLSOUTH'S ABILITY  
3 TO RAISE PRICES FOR OTHER SERVICES IN SOUTH CAROLINA?

4  
5 A. Absolutely not. As state statutes envision, competition affects BellSouth's ability  
6 to raise rates for "Other Services" in South Carolina.

7  
8 Q. WHY DO YOU SAY THAT STATE STATUTES ENVISION COMPETITION  
9 AFFECTING BELLSOUTH'S ABILITY TO RAISE RATES FOR "OTHER  
10 SERVICES" IN SOUTH CAROLINA?

11  
12 A. As BellSouth witness Dr. Taylor explains, the best way to benefit consumers is to  
13 create an environment in which competition can flourish in South Carolina. This  
14 is exactly what South Carolina statutes do.

15  
16 Statutory provisions passed in 1996 take steps necessary to create an environment  
17 in which competition can flourish. These provisions are codified as subsections  
18 (B) through (O) of Section 58-9-280. Among other things, these provisions  
19 require the Commission to determine requirements, "consistent with applicable  
20 federal law," that provide for: interconnection of facilities between local  
21 telephone service providers; local number portability; and reasonable unbundling  
22 of network elements under specified conditions. *See* S.C. Code Ann. §58-9-  
23 280(C). The Commission has implemented the provisions of both this legislation

1 and the federal Telecommunications Act of 1996, and, as a result, both this  
2 Commission and the FCC have found that the local exchange market in South  
3 Carolina is open to competition. As explained below, this has led to an  
4 *environment in which many local service providers are offering a wide array of*  
5 *services to both business and residential customers in South Carolina, and*  
6 *consumers are receiving the benefits of this vibrant competition.*

7  
8 In addition to creating an environment where competition can flourish in the local  
9 exchange market, state statutes also protect competition. For companies operating  
10 under alternative regulation, Section 58-9-576(B)(5) makes prices for "Other  
11 Services" subject to a complaint process for abuse of market position. For all the  
12 reasons explained by BellSouth witness Dr. Taylor, and consistent with my  
13 understanding of Staff witness Dr. Spearman's testimony, the purpose of this  
14 provision is to protect competition which, in turn, protects consumers.

15  
16 Q. BUT DO CUSTOMERS IN SOUTH CAROLINA REALLY HAVE CHOICES  
17 WHEN IT COMES TO "OTHER SERVICES?"

18  
19 A. Absolutely. For example, if one considers BellSouth's optional residential  
20 services that were challenged in the Consumer Advocate's Complaint that led to  
21 the initiation of this proceeding, it is clear that CLECs offer the same or similar  
22 services to consumers at a wide range of prices.

1 BellSouth's new tariffed monthly rate for residential call waiting, for example, is  
2 \$4.50. According to tariffs on file with the Commission, VarTec offers  
3 residential call waiting for \$2.95 per month; NuVox offers residential call waiting  
4 for \$4.18 per month; and E-Z Tel offers residential call waiting for \$5.00 per  
5 month.

6  
7 BellSouth's new tariffed monthly rate for residential Call Waiting Deluxe is  
8 \$6.50. According to tariffs on file with the Commission, VarTec offers  
9 residential call waiting deluxe for \$3.95 per month; NuVox offers residential call  
10 waiting deluxe for \$5.70 per month; and Knology offers "call waiting display –  
11 residential" for \$5.70 per month.

12  
13 BellSouth's new tariffed monthly rate for residential call forwarding is \$4.00.  
14 According to tariffs on file with the Commission, VarTec offers residential call  
15 forwarding for \$2.95 per month; NuVox offers residential call forwarding for  
16 \$3.80 per month; E-Z Tel offers residential call forwarding for \$5.00 per month;  
17 and Knology offers "call forwarding – residential" for \$3.80 per month.

18  
19 BellSouth's new tariffed monthly rate for residential three way calling is \$5.00.  
20 According to tariffs on file with the Commission, VarTec offers residential three  
21 way calling for \$2.95 per month; NuVox offers residential three way calling for  
22 \$3.80 per month; E-Z Tel offers residential three way calling for \$5.00 per month;  
23 and Knology offers "three-way calling – residential" for \$3.30 per month.

1 BellSouth's new tariffed monthly rate for residential call return is \$5.00.  
2 According to tariffs on file with the Commission, VarTec offers residential call  
3 return for \$2.95 per month; NuVox offers residential call return for \$3.80 per  
4 month; E-Z Tel offers residential call return for \$5.00 per month; and Knology  
5 offers "automatic recall – residential" for \$3.80 per month.

6  
7 BellSouth's new tariffed monthly rate for residential Caller ID Basic is \$7.00.  
8 According to tariffs on file with the Commission, VarTec offers residential Caller  
9 ID Basic for \$4.95 per month; NuVox offers residential Caller ID Basic for \$6.65  
10 per month; and E-Z Tel offers residential caller ID for \$10.00 per month.

11  
12 BellSouth's new tariffed monthly rate for residential Caller ID Deluxe is \$7.95.  
13 According to tariffs on file with the Commission, VarTec offers residential Caller  
14 ID Deluxe for \$6.95 per month; and NuVox offers residential Caller ID Deluxe  
15 for \$7.13 per month.

16  
17 The relevant portions of the tariffs referenced above are attached as Exhibit JAR-  
18 1 to my testimony. I obviously have not attempted to address each and every  
19 competitor that offers these services to residential customers in South Carolina,  
20 but this information alone shows that consumers have choices when it comes to  
21 local exchange services in this state in general, and when it comes to the optional  
22 local exchange services that are the subject of the tariff that led to the initiation of



1           this proceeding in particular. I discuss even more of the choices that are available  
2           in the form of bundled service offerings later in my testimony.

3  
4    Q.    DO PRICE INCREASES LIKE THE ONES IN BELLSOUTH'S TARIFF HARM  
5           COMPETITION?

6  
7    A.    No. When BellSouth raises prices for its services, it actually makes it easier for  
8           competitors to enter the market in South Carolina and offer more choices to  
9           consumers. This creates the opportunity for more competition, and more  
10          competition benefits consumers.

11  
12   Q.    WHY DO YOU SAY THAT PRICE INCREASES BY BELLSOUTH MAKE IT  
13          EASIER FOR COMPETITORS TO ENTER THE MARKET OR EXPAND  
14          THEIR EXISTING MARKET IN SOUTH CAROLINA?

15  
16   A.    When BellSouth increases its prices, competitors have a greater incentive to offer  
17          competing services, or to market those services aggressively, because the  
18          competitors should have greater success competing against BellSouth when  
19          BellSouth charges more.

20  
21               **IV. COMMENTS TO DR. SPEARMAN'S TESTIMONY**  
22